

May 02, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILLIAM M.,

No.4:18-CV-05128-JTR

Plaintiff,

ORDER GRANTING, IN PART,
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 14, 16. Attorney Cory Brandt represents William M. (Plaintiff); Special Assistant United States Attorney Catherine Escobar represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS, IN PART**, Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

JURISDICTION

Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on March 6, 2014, alleging disability since July 6,

1 2013, due to a heart attack with residual symptoms, high blood pressure, high
2 cholesterol, and multiple strokes. Tr. 189-94, 207. The applications were denied
3 initially and upon reconsideration. Tr. 117-25, 128-38. Administrative Law Judge
4 (ALJ) Mary Gallagher Dilley held a hearing on December 6, 2016, Tr. 29-65, and
5 issued an unfavorable decision on August 18, 2017, Tr. 15-23. The Appeals
6 Council denied Plaintiff's request for review on May 24, 2018. Tr. 1-6. The
7 ALJ's August 2017 decision thus became the final decision of the Commissioner,
8 which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff
9 filed this action for judicial review on July 25, 2018. ECF No. 1, 4.

10 **STATEMENT OF FACTS**

11 Plaintiff was born in 1969 and was 44 years old as of the alleged onset date.
12 Tr. 21. He has a high school education and a two-year degree in business
13 management. Tr. 36-37. He last worked as a truck driver in Oklahoma in 2008.
14 Tr. 37, 208. He quit this job after his wife passed away. Tr. 208. Plaintiff alleged
15 his disability began in July 2013 when he had a heart attack. Tr. 42, 208.

16 At the hearing, Plaintiff testified his primary barrier to working was his back
17 pain, which limited the amount of time he could walk and sit, and his unpredictable
18 variations in blood pressure, which caused headaches, lightheadedness, fatigue,
19 and visual disturbances, necessitating multiple rest periods throughout the day. Tr.
20 40, 43-47, 50-51.

21 **STANDARD OF REVIEW**

22 The ALJ is responsible for determining credibility, resolving conflicts in
23 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
24 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
25 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
26 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
27 only if it is not supported by substantial evidence or if it is based on legal error.
28 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is

1 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
2 1098. Put another way, substantial evidence is such relevant evidence as a
3 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
4 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
5 rational interpretation, the Court may not substitute its judgment for that of the
6 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
7 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
8 administrative findings, or if conflicting evidence supports a finding of either
9 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
10 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
11 supported by substantial evidence will be set aside if the proper legal standards
12 were not applied in weighing the evidence and making the decision. *Brawner v.*
13 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

14 **SEQUENTIAL EVALUATION PROCESS**

15 The Commissioner has established a five-step sequential evaluation process
16 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
17 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through
18 four, the burden of proof rests upon the claimant to establish a *prima facie* case of
19 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is
20 met once a claimant establishes that a physical or mental impairment prevents the
21 claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4),
22 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds
23 to step five, and the burden shifts to the Commissioner to show that (1) the
24 claimant can make an adjustment to other work; and (2) specific jobs which the
25 claimant can perform exist in the national economy. *Batson v. Commissioner of*
26 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make
27 an adjustment to other work in the national economy, the claimant will be found
28 disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

ADMINISTRATIVE DECISION

On August 23, 2017, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since July 6, 2013, the alleged onset date. Tr. 17.

At step two, the ALJ determined Plaintiff had the following severe impairments: coronary artery disease, lumbar degenerative disc disease, and hypertension. Tr. 17.

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 17-18.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found Plaintiff could perform light exertion level work with the following limitations:

he can stand and walk four hours in an eight at [sic] hour day each. He can sit for two hours in an eight-hour day. He can never climb ladders ropes and scaffolds and can occasionally climb ramps and stairs; he can occasionally balance, stoop, kneel, crouch, and crawl. He must avoid all exposure to extreme heat and vibrations; he can tolerate occasional exposure to extreme cold and unprotected heights; and he can tolerate frequent exposure to moving mechanical parts.

Tr. 18.

At step four, the ALJ found Plaintiff was not able to perform his past relevant work as a cashier, tractor-trailer driver, stock clerk, or poultry farm worker. Tr. 21.

At step five, the ALJ determined that, based on the testimony of the vocational expert, and considering Plaintiff's age, education, work experience, and RFC, Plaintiff was capable of making a successful adjustment to other work that existed in significant numbers in the national economy, including the jobs of

1 production line solderer; electrical accessories assembler; and agricultural produce
2 sorter. Tr. 22.

3 The ALJ thus concluded Plaintiff was not under a disability within the
4 meaning of the Social Security Act at any time from July 6, 2013, the alleged onset
5 date, through the date of the ALJ's decision, August 23, 2017. Tr. 22.

6 ISSUES

7 The question presented is whether substantial evidence supports the ALJ's
8 decision denying benefits and, if so, whether that decision is based on proper legal
9 standards.

10 Plaintiff contends the ALJ erred by (1) improperly rejecting medical opinion
11 evidence; (2) improperly rejecting Plaintiff's subjective statements and the lay
12 witness statements; and (3) making unsupported step five findings.

13 DISCUSSION¹

14 1. Medical opinion evidence

15 Plaintiff argues the ALJ erred by failing to properly consider the medical
16 opinion evidence of record. ECF No. 14 at 10-14. Plaintiff specifically asserts the
17 ALJ erred by according "little weight" to the opinions of treating doctors Hipolito
18 and Marcelo, and in rejecting portions of the opinions from consultative examiner
19 Dr. Drenguis and nonexamining consultant Dr. Hurley. *Id.*

20

21

22 ¹In *Lucia v. S.E.C.*, 138 S.Ct. 2044 (2018), the Supreme Court recently held
23 that ALJs of the Securities and Exchange Commission are "Officers of the United
24 States" and thus subject to the Appointments Clause. To the extent *Lucia* applies
25 to Social Security ALJs, the parties have forfeited the issue by failing to raise it in
26 their briefing. See *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161
27 n.2 (9th Cir. 2008) (the Court will not consider matters on appeal that were not
28 specifically addressed in an appellant's opening brief).

1 In a disability proceeding, the courts distinguish among the opinions of three
2 types of acceptable medical sources: treating physicians, physicians who examine
3 but do not treat the claimant (examining physicians) and those who neither
4 examine nor treat the claimant (nonexamining physicians). *Lester v. Chater*, 81
5 F.3d 821, 830 (9th Cir. 1996). A treating physician’s opinion carries more weight
6 than an examining physician’s opinion, and an examining physician’s opinion is
7 given more weight than that of a nonexamining physician. *Benecke v. Barnhart*,
8 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830.

9 In weighing the medical opinion evidence of record, an ALJ must make
10 findings setting forth specific, legitimate reasons for her assessment that are based
11 on substantial evidence in the record. *Magallanes v. Bowen*, 881 F.2d 747, 751
12 (9th Cir. 1989). The ALJ must also set forth the reasoning behind his or her
13 decisions in a way that allows for meaningful review. *Brown-Hunter v. Colvin*,
14 806 F.3d 487, 492 (9th Cir. 2015) (finding a clear statement of the agency’s
15 reasoning is necessary because the Court can affirm the ALJ’s decision to deny
16 benefits only on the grounds invoked by the ALJ).

17 **A. Drs. Hipolito and Marcelo**

18 When a treating physician’s opinion is not contradicted by another
19 physician, the ALJ may reject the opinion only for “clear and convincing” reasons;
20 when a treating physician’s opinion is contradicted by another physician, the ALJ
21 is only required to provide “specific and legitimate reasons,” based on substantial
22 evidence, to reject the opinion. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir.
23 1995). The specific and legitimate standard can be met by the ALJ setting out a
24 detailed and thorough summary of the facts and conflicting clinical evidence,
25 stating her interpretation thereof, and making findings. *Magallanes*, 881 F.2d at
26 751. The ALJ is required to do more than offer his conclusions, he “must set forth
27 his interpretations and explain why they, rather than the doctors’, are correct.”
28 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

1 Dr. Hipolito provided a medical source statement on April 5, 2016, stating
2 Plaintiff was capable of no more than sedentary work, would be expected to be off-
3 task 50% of a normal work day, and would be absent four or more days per month.
4 Tr. 432-33. She additionally opined Plaintiff would have limitations on
5 performing postural activities and would need to lie down approximately three to
6 four times during an eight-hour work shift. Tr. 433.

7 Dr. Hipolito and Dr. Marcelo each submitted a copy of a letter indicating
8 their opinion that Plaintiff's high and low blood pressure events caused symptoms
9 that would prevent him from returning safely to work. Tr. 434, 708. Both doctors
10 deferred further recommendations regarding Plaintiff's ability to work and the
11 duration of his incapacity to his specialist. *Id.*

12 These opinions are contradicted by other opinions in the record. Tr. 88-97,
13 407-11, 724-33; thus the ALJ was required to give specific and legitimate reasons
14 supported by substantial evidence for her rejection. The ALJ gave each of the
15 treating doctor opinions little weight due to inconsistency with the medical
16 evidence, including Plaintiff's regular denial of symptoms, good strength on
17 exams, Plaintiff's own reports of greater abilities, no evidence of difficulty
18 focusing, and evidence of Plaintiff's cardiac condition being stable. Tr. 21.

19 A conflict between treatment notes and a treating provider's opinion may
20 constitute an adequate reason to discredit the opinion of a treating physician. *See*
21 *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 692-93 (9th Cir. 2009)
22 (holding that a conflict with treatment notes is a specific and legitimate reason to
23 reject a treating physician's opinion). Here, however, substantial evidence does
24 not support the ALJ's conclusion that the opinions of Drs. Hipolito and Marcelo
25 were inconsistent with the treatment notes.

26 The ALJ asserted Plaintiff "regularly denied experiencing any headaches,
27 chest pain, dizziness, or transient weakness." Tr. 21. However, the entire record
28 must be considered in context. While Plaintiff did not present at every medical

1 appointment with each of the noted symptoms, he endorsed all of them at varying
2 times. *See* Tr. 667 (positive for headache); Tr. 416, 427, 436, 453, 472, 485, 488,
3 494, 584, 633, 640 (positive for chest pain or tightness); Tr. 472, 482, 626, 660
4 (positive for dizziness); Tr. 646 (positive for weakness). All symptoms mentioned
5 in the treating doctors' letters appear in the treatment records. Furthermore,
6 Plaintiff testified that he experiences good days and bad days. Tr. 46-47. It is not
7 sufficient for the ALJ to cherry-pick isolated instances where Plaintiff did not
8 report specific symptoms and use those instances to reject the opinions of the
9 treating doctors, who were no doubt familiar with the longitudinal record. The
10 ALJ must read treatment notes "in context of the overall diagnostic picture [drawn
11 by the doctor]." *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001).
12 Furthermore, "occasional symptom-free periods . . . are not inconsistent with
13 disability." *Lester*, 81 F.3d 821, 833 (9th Cir. 1995).

14 The ALJ also stated that she was rejecting the treating doctors' opinions due
15 to Plaintiff demonstrating good strength on examinations. Tr. 21. This is not
16 inconsistent with the doctors' opinions that Plaintiff would be unable to work due
17 to his labile blood pressure.

18 The ALJ next stated that little weight was due to the opinion limiting
19 Plaintiff to sedentary work because "the claimant also reported that he could lift up
20 to 25 pounds and walk four miles, which is inconsistent with a limitation to
21 sedentary work." Tr. 21. Dr. Hipolito's opinion applied to Plaintiff's abilities over
22 an eight-hour day on a continuing basis. Tr. 432. The instance referenced by the
23 ALJ of Plaintiff walking four miles was an isolated event during which his vehicle
24 broke down and he had no alternative way to reach home. Tr. 55. This does not
25 constitute substantial evidence to justify rejecting the treating physician's opinion.
26 Similarly, the ALJ unduly emphasized Plaintiff's passing reports of how much
27 weight he could lift: in his adult function report, Plaintiff stated "I have trouble
28 lifting 25 to 30 pounds because it makes my chest hurt." Tr. 224. The physical

1 consultative exam noted “he states that as a single effort he could lift 50 pounds,
2 but would become markedly fatigued trying to carry that. Twenty-five pounds
3 seems like a more workable weight for him.” Tr. 408. Neither of these instances
4 indicate that Plaintiff believed he could lift and carry twenty-five pounds on a
5 regular basis throughout a workday. Therefore, no inconsistency with Dr.
6 Hipolito’s opinion exists.

7 The ALJ further stated that there was no support in the record that Plaintiff
8 had difficulty concentrating that would lead to him being off-task for 50% of a
9 workday. Tr. 21. However, Dr. Hipolito did not indicate in her opinion that time
10 off-task was due to difficulty concentrating; her opinion was based on Plaintiff’s
11 coronary artery disease, hypertension, history of strokes, and lumbar radiculopathy.
12 Tr. 433. Symptoms other than impairment in a worker’s concentration abilities can
13 lead to time off-task. No inconsistency is present.

14 Finally, the ALJ rejected Dr. Hipolito’s opinion based on the stable nature of
15 Plaintiff’s cardiac condition, indicating this meant he would not have absences at
16 the rate opined by Dr. Hipolito. Tr. 21. Dr. Hipolito’s own treatment notes
17 indicate that, while Plaintiff’s coronary artery disease was “stable,” his
18 hypertension was still “uncontrolled.” Tr. 679. While both conditions concern the
19 cardiovascular system, they are consistently noted as distinct diagnoses in the
20 treatment records. *See e.g.*, Tr. 436, 471-72, 584, 691. This is consistent with
21 Plaintiff’s report at the hearing that his cardiologist indicated the heart itself is
22 stronger, but the fluctuations in his blood pressure still put a strain on it. Tr. 54.
23 Dr. Hipolito and Dr. Marcelo both emphasized Plaintiff’s labile blood pressure as
24 the primary basis for their opinions. Tr. 434, 708. The stable nature of one of
25 Plaintiff’s conditions does not negate the limitations assessed by his treating
26 doctors to account for another condition.

1 The Court finds the ALJ failed to provide specific and legitimate reasons for
2 disregarding the opinions of Plaintiff's treating doctors. This matter must be
3 remanded for further consideration of these opinions.

4 **B. State agency consultant Dr. Hurley**

5 Plaintiff contends the ALJ failed to give valid reasons for rejecting state
6 agency consultant Dr. Hurley's opinion limiting Plaintiff to standing and walking
7 no more than two hours. ECF No. 14 at 13-14.

8 The Commissioner may reject the opinion of a non-examining physician by
9 reference to specific evidence in the medical record. *Sousa v. Callahan*, 143 F.3d
10 1240, 1244 (9th Cir. 1998). Here, the ALJ rejected Dr. Hurley's opinion based on
11 Plaintiff's testimony that "he spends his time talking and can walk for miles" and
12 the fact that the function reports indicated no difficulty with standing. Tr. 20.
13 While Plaintiff's daily activities and his own assertion that he had no difficulty
14 standing could possibly constitute a sufficient basis for rejecting this opinion, this
15 matter must be remanded for additional proceedings regarding the treating doctors,
16 and the ALJ therefore shall also review this opinion again and accord it appropriate
17 weight in light of the rest of the evidence.²

18 **C. Consultative examiner Dr. Drenguis**

19 Plaintiff argues the ALJ erred in giving little weight to the manipulative
20 limitations assessed by Dr. Drenguis. ECF No. 14 at 13.

21 Following an August 2014 exam, Dr. Drenguis offered a medical source
22 statement regarding Plaintiff's abilities. Tr. 410-11. Among other limits, he
23 opined Plaintiff "may frequently reach, handle, finger and feel." Tr. 411. The ALJ
24 found the manipulative limitations not well-supported by the exam results, which
25 showed no issues with the extremities. Tr. 20.

26
27 ²It is not clear to the Court whether the ALJ meant "walking" or "talking."
28 If the latter, the ALJ should clarify how "talking" was a basis for the rejection.

1 Any error in this rejection is harmless. Two of the three jobs identified by
2 the vocational expert in the post-hearing interrogatories, production line solderer
3 and electrical accessories assembler, do not require more than frequent reaching,
4 handling, fingering, or feeling. Tr. 290.³ Those two jobs exist in significant
5 numbers. Tr. 22. Therefore, even if the ALJ had adopted Dr. Drenguis' assessed
6 limitations in full, the outcome would not have changed. *See Tommasetti v.*
7 *Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (An error is harmless when "it is clear
8 from the record that the . . . error was inconsequential to the ultimate nondisability
9 determination.").

10 However, as this case is being remanded for further proceedings concerning
11 the other medical evidence, the ALJ will reconsider the entire medical record,
12 including Dr. Drenguis' opinion.

13 **2. Plaintiff's subjective complaints**

14 Plaintiff contends the ALJ erred by improperly rejecting his subjective
15 complaints. ECF No. 14 at 14-17.

16 It is the province of the ALJ to make credibility determinations. *Andrews v.*
17 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be
18 supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231
19 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying
20 medical impairment, the ALJ may not discredit testimony as to the severity of an

22 ³The excerpt from the Dictionary of Occupational Titles referenced by the
23 Vocational Expert includes information regarding the physical demands of each
24 occupation, including reaching (RE), handling (HA), fingering (FI) and feeling
25 (FE), with the frequency of the demand for each activity designated as never (N),
26 occasional (O), frequent (F) or constant (C). *See Selected Characteristics of*
27 *Occupations Defined in the Revised Dictionary of Occupational Titles*, U.S.
28 Department of Labor, Appendix C (1993).

1 impairment merely because it is unsupported by medical evidence. *Reddick v.*
2 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of
3 malingering, the ALJ's reasons for rejecting the claimant's testimony must be
4 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.
5 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General findings are
6 insufficient: rather the ALJ must identify what testimony is not credible and what
7 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
8 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

9 The ALJ concluded Plaintiff's medically determinable impairments could
10 reasonably be expected to cause some of his alleged symptoms; however,
11 Plaintiff's statements concerning the intensity, persistence and limiting effects of
12 those symptoms were not entirely consistent with the medical and other evidence
13 of record. Tr. 19. The ALJ listed the following reasons for finding Plaintiff's
14 subjective complaints not persuasive in this case: (1) Plaintiff had regularly denied
15 experiencing a number of the alleged symptoms; (2) testing indicated that
16 Plaintiff's cardiac condition was stable; (3) exacerbations of his cardiac condition
17 had mostly occurred when Plaintiff stopped taking his medications; (4) the record
18 showed Plaintiff had been able to control his hypertension; (5) Plaintiff continued
19 to smoke cigarettes; (6) Plaintiff's testimony regarding his inability at times to
20 participate in cardiac rehab was inconsistent with the record; and (7) the overall
21 objective findings with respect to Plaintiff's back condition did not support his
22 claim of disability. Tr. 19.

23 This matter is being remanded for additional proceedings to remedy errors in
24 the ALJ's evaluation of the medical opinion evidence of record. The ALJ shall
25 also evaluate Plaintiff's statements and testimony with the benefit of the
26 reconsidered medical evidence. The ALJ shall reassess what statements, if any, are
27 not consistent with the medical evidence and other evidence in the record, and
28

1 what specific evidence undermines those statements. The third-party statements
2 shall be similarly reassessed.

3 **3. Step five findings**

4 Plaintiff argues the ALJ erred in her step five determination because the
5 testimony of the vocational expert was based on an incomplete hypothetical
6 stemming from an inaccurate assessment of the medical and other evidence. ECF
7 No. 14 at 17-18.

8 Considering the case is being remanded for the ALJ to properly address the
9 medical opinion evidence and Plaintiff's subjective symptom testimony, the ALJ
10 will be required to make a new step five determination and call upon a vocational
11 expert to provide testimony.

12 **CONCLUSION**

13 Plaintiff argues the ALJ's decision should be reversed and remanded for the
14 payment of benefits. The Court has the discretion to remand the case for additional
15 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292
16 (9th Cir. 1996). The Court may award benefits if the record is fully developed and
17 further administrative proceedings would serve no useful purpose. *Id.* Remand is
18 appropriate when additional administrative proceedings could remedy defects.
19 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court
20 finds that further development is necessary for a proper determination to be made.

21 The ALJ's RFC determination is not supported by substantial evidence in
22 this case and must be reevaluated. On remand, the ALJ shall reassess the medical
23 evidence, specifically the opinions of Drs. Hipolito and Marcelo. The ALJ shall
24 reevaluate Plaintiff's subjective complaints and the testimony of the third-party,
25 formulate a new RFC, obtain supplemental testimony from a vocational expert, if
26 necessary, and take into consideration any other evidence or testimony relevant to
27 Plaintiff's disability claim.

28 Accordingly, **IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 14, is
GRANTED, IN PART.

2. Defendant's Motion for Summary Judgment, ECF No. 16, is
DENIED.

3. The matter is **REMANDED** to the Commissioner for additional proceedings consistent with this Order.

4. An application for attorney fees may be filed by separate motion.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

IT IS SO ORDERED.

DATED May 2, 2019.



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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE